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10 Attorneys for Plaintiffs and Counter-Defendants

11 **UNITED STATES DISTRICT COURT**
12 **CENTRAL DISTRICT OF CALIFORNIA**
13

14 SERENDIP LLC & WENDY
15 CARLOS,

16 Plaintiffs,

17 v.

18 WARNER BROS. ENTERTAINMENT
19 INC.,

20 Defendant.

21 WARNER BROS. ENTERTAINMENT
22 INC.,

23 Counter-Claimant,

24 v.

25 SERENDIP LLC & WENDY
26 CARLOS,

27 Counter-Defendants.
28

CASE NO. CV 08-07739 RGK (RCx)

The Honorable R. Gary Klausner

**DECLARATION OF WENDY
CARLOS IN OPPOSITION TO
DEFENDANT'S MOTION FOR
PARTIAL SUMMARY JUDGMENT**

Fed.R.Civ.P.56

Date: November 30, 2009

Time: 9:00 a.m.

Place: Courtroom 850
255 E. Temple St.
Los Angeles, CA

DECLARATION OF WENDY CARLOS

I, Wendy Carlos, hereby declare as follows:

1. I am a member of Plaintiff Serendip LLC ("Serendip") and also an individual Plaintiff. I make this Declaration in opposition to Defendant's motion for partial summary judgment. I have personal knowledge of the facts set forth in this Declaration, which are true to my own knowledge, and, if called as a witness, I could and would testify competently thereto.

2. In 1971, working in my New York City studio in collaboration with my producer Rachel Elkind, I composed or arranged, orchestrated, performed and recorded ten pieces of music utilizing the Moog synthesizer which have a connection with the motion picture "A Clockwork Orange." Two works which were used in the soundtrack were completed before I began work on the music for the motion picture: an original work, "Timesteps," and an abridgment, arrangement and orchestration of Beethoven's Ninth Symphony, Fourth Movement, which became known as "March From A Clockwork Orange."

3. After an agreement was entered into with the director Stanley Kubrick's production company, I composed five additional pieces and arranged three others; of these eight works, four were ultimately used in the soundtrack of the motion picture. Two of my original works, "Title Music From A Clockwork Orange," and "Theme From A Clockwork Orange (Beethoviana)" are variations on a theme by Henry Purcell, written in 1695, but otherwise are completely original compositions, arrangements, and orchestrations. Two other works, "William Tell Overture" and Beethoven's Ninth Symphony, Second Movement ("Suicide Scherzo") are abridgments, arrangements and orchestrations of the original works by Rossini and Beethoven.

4. During the course of our work, our main interface with Kubrick was to periodically send cassette tapes to him in the U.K., sometimes giving him

1 alternative versions to choose among in order to satisfy his wishes for the
2 soundtrack of the motion picture "A Clockwork Orange."

3 5. As previously stated in my declaration of November 4, 2009 in
4 support of plaintiffs' motion for partial summary judgment, in 1978, after we had
5 heard through a third party that Stanley Kubrick's next motion picture project was
6 to be based upon Stephen King's novel "The Shining," Rachel Elkind and I each
7 read the book and eventually had one brief telephone conversation of less than ten
8 minutes with Kubrick. During this conversation, Kubrick was unforthcoming and
9 noncommittal about his project or its status. He gave us no guidance, he did not
10 commission any music, we made no agreement, we discussed no terms, he did not
11 ask us to do anything, he did not promise to do anything and neither did Rachel
12 Elkind and I.

13 6. Following the telephone conversation with Kubrick, Rachel Elkind
14 and I elected to prepare demonstration music at our own expense and selection and
15 send it to him in the hopes that he might use some of it as temporary tracks for the
16 motion picture. One of the pieces included as demonstration music was an
17 arrangement of Sibelius's "Valse Triste." The published sheet music I used as the
18 source for the original composition made it appear to be in the public domain in
19 the U.S.; however, in any event, no copyright license is required for use simply as
20 a demonstration cue.

21 7. At about the end of 1978, Jan Harlan informed Rachel Elkind and me
22 that they wished to use an original composition from a demonstration tape we had
23 sent to Kubrick in the theatrical trailer. At this time, no agreement was discussed
24 and no commitments were made regarding music for "The Shining."

25 8. We heard nothing else until the end of 1979, when we were asked to
26 come to the U.K. to discuss our possible engagement as composers for the
27 soundtrack of "The Shining." We flew to London in early January 1980 and met
28 with Kubrick for about a week to discuss the picture. Upon our return to the U.S.,

1 we finally received a draft agreement to retain us as composers for “The Shining”
2 in February 1980. The draft was the first time we were informed of the “work for
3 hire” terms of the agreement. The last draft version of the agreement was not sent
4 to us until April 1, 1980, and was not actually executed by us until long after our
5 work had finished and the motion picture was released on May 23, 1980. Attached
6 as Exhibit A are true copies of documents produced by Defendant Warner Bros.
7 during discovery showing the transmittal dates of the agreement drafts.

8 9. I first learned that “A Clockwork Orange” had been released on home
9 video when we acquired it on laserdisc during a closeout sale in late 1998 or early
10 1999 at the local Tower Video store when DVDs were becoming the main quality
11 format. Later in 1999, Serendip learned that my recorded arrangement of “Valse
12 Triste,” included with the demonstration music for “The Shining,” had been used
13 without a license by Vivian Kubrick in a video featurette “The Making of The
14 Shining,” included in a 1999 video release. When I discussed the matter with Ms.
15 Kubrick via e-mail, she asked me to contact Jan Harlan, who would “be only too
16 happy to correct this.” I did raise the matter with Harlan in person and by e-mail
17 without resolving it, and so informed Vivian Kubrick in a telephone conversation
18 in February 2001. She promised to take care of it. Attached as Exhibit B are true
19 copies of e-mail exchanges with Vivian Kubrick and Jan Harlan.

20 10.. When I was interviewed by Jan Harlan in 2000 for the purposes of
21 his video production “Stanley Kubrick: A Life In Pictures,” at no time did Harlan
22 inform me that he intended to use clips from “A Clockwork Orange” containing
23 my music in his production, nor did he ask for my consent to do so.

24 11. In 2006, Serendip learned that Mr. Harlan had used clips from “A
25 Clockwork Orange” containing my music in a video featurette “Oh Lucky
26 Malcolm.” At the same time, Serendip confirmed that some of the clips from “A
27 Clockwork Orange” Harlan had used in his video production “Stanley Kubrick: A
28 Life In Pictures” also contained my music. We communicated with Harlan by e-

1 mail about the various music uses in these video features, as well as "The Making
2 of The Shining," and attempted to resolve all the licensing issues together without
3 success. Attached as Exhibit C are true copies of e-mail exchanges with Jan
4 Harlan.

5 12. Attached as Exhibit D are true copies of listings of the various video
6 featurretes containing my music placed on the World Wide Web by Defendant for
7 the commercial purposes of promoting the sale of home video devices.

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9 I declare under penalty of perjury pursuant to the laws of the United States
10 that the foregoing is true and correct.

11 November 16, 2009
12 New York, NY



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14 Wendy Carlos
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